

Possible Charges to Consider During or post Protest Events

The changing landscape of the ongoing protests around the city has presented a significant challenge for policing. The following are some considerations for enforcement while attending these events. It must be stressed however, that this should be seen as a starting point for an investigation, rather than necessarily a charge to be laid immediately. Successful prosecution of any charges laid is critical, and may require additional evidence to be gathered, plus the assistance of the Crown Prosecutor before an arrest is made. Please keep these in mind when gathering evidence at such events, though this is not an exhaustive list, each event is unique, and must be regarded as such.

1. S.73(1) Public Health Act; Contravening the Order of a Chief Medical Officer of Health: Part 2 ticket, \$4800 specified penalty.

The current CMOH Order (as of 2022/01/12) is 01-2022, however the restrictions imposed in 55-2021 are still applicable and read as follows:

A. Private social gatherings for protests

7.6. Despite this Part of this Order, a person may attend at an outdoor public place to exercise their right to peacefully demonstrate for a protest or political purpose without limit to the number of persons in attendance if the person:

- (a) remains outdoors except where necessary to use the washroom;
- (b) wears a face mask at all times;
- (c) maintains a minimum physical distance of two metres from any other person in attendance, including any other person who is a member of the person's household, unless:
 - i. either the person or the other person is, or both persons are, eleven years of age or younger; and
 - ii. both persons are members of the same household;
 in which case this subsection does not apply;
- (d) does not offer food or beverages to any other person in attendance, regardless of whether the food or beverage is provided for sale or not; and
- (e) immediately disperses in a coordinated fashion at the conclusion of the gathering, while at all times adhering to the requirements in this section.

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2. S.175(1)(a) CC Causing A Disturbance

This makes it an offence to cause a disturbance in or near a public place by, inter alia, fighting, screaming, shouting, swearing, singing or using insulting or obscene language.

This could be a potentially difficult charge to lay as there are protections in Canadian Law for expression of opinions during protests that may not apply to, for instance, an intoxicated person causing a disturbance outside a nightclub.

3. S.430(1)CC Mischief

Every one commits mischief who wilfully

- (a) destroys or damages property;
- (b) renders property dangerous, useless, inoperative or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

Again – this cannot be treated lightly; for a charge to succeed here, there must be clear interference with property; simply having people outside one's home is not sufficient to say that their home is being interfered with criminally.

4. S.423.1(1)CC Intimidation of a Justice System Participant or Journalist:

No person shall, without lawful authority, engage in any conduct with the intent to provoke a state of fear in

- a. (a) a group of persons or the general public in order to impede the administration of criminal justice;
- b. (b) a justice system participant in order to impede him or her in the performance of his or her duties; or
- c. (c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.

This is an exceptionally serious charge -the only one that gives particular notice of the victim's status as an elected official- and one without a great deal of history in Canadian law. It should not be approached lightly, and **not** without Crown consultation prior to laying a charge. Elected officials are defined as Justice System Participants under the Criminal Code.

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5. S.264(1)CC Uttering Threats

Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

- (a) to cause death or bodily harm to any person;
- (b) to burn, destroy or damage real or personal property; or
- (c) to kill, poison or injure an animal or bird that is the property of any person.

This section should be relatively straightforward should specific threats be uttered against a person during a protest, as long as they meet the specific criteria in the section.

6. S.264(2) Criminal Harassment

- (a) repeatedly following from place to place the other person or anyone known to them;
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or any member of their family.

There is a very high threshold for this charge in criminal law. It should generally not be embarked upon in the context of a protest without Crown consult.

7. Numerous sections of the Traffic Safety Act:

While an exhaustive list of TSA charges possibly applicable during a protest would be unwieldy, keep in mind various sections concerning the blocking of traffic or other interference with road users.

8. Petty Trespass Act

This may be applicable if notice denying entry to private property was somehow conveyed by sign or verbally to persons who then proceeded to enter the property in question.

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